

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
MIDDLE DIVISION**

WENDY KING,

PLAINTIFF,

v.

**DURHAM & DURHAM, LLP,
PETER D. DURHAM, ESQ.**

DEFENDANT.

**CIVIL ACTION NUMBER:
JURY TRIAL DEMANDED**

PLAINTIFF'S COMPLAINT

This is an action brought by the Plaintiff, Wendy King, for actual and statutory damages, attorney's fees, and costs for Defendant's violations of the Fair Debt Collections Practices Act, 15 U.S.C. § 1692 *et seq.* (hereinafter "FDCPA"). Plaintiff also seeks compensatory and punitive damages for the Defendant's violations of Alabama's common laws set forth herein.

JURISDICTION AND VENUE

This Court has jurisdiction under 15 U.S.C. §1692k (d), and 28 U.S.C. §1331, §1332, and §1367. Venue is proper in that the Defendant transacted business here, and the Plaintiff resides here.

PARTIES

1. The Plaintiff, Wendy King, is a resident and citizen of the state of Alabama, St. Clair County, and is over the age of twenty-one (21) years.
2. The Defendant, Durham & Durham, LLP. is, upon information and belief, a limited liability partnership organized under the laws of the state of

Georgia with a principal office at 5665 New Northside Drive, Suite 340 Atlanta, GA 30328. The Defendant was, in all respects and at all times relevant herein, doing business in the State of Alabama and in this District. The Defendant is engaged in the business of collecting consumer debts from consumers residing in St. Clair County, Alabama and is a "debt collector," as defined by the FDCPA 15 U.S.C. §1692a(6).

FACTUAL ALLEGATIONS

3. By correspondence dated April 2, 2008, Defendant arranged for the preparation and transmittal of a letter to Plaintiff demanding payment of a debt allegedly due Trinity Emergency Physicians, LLC, in the amount of \$294.00. A true and correct copy of said correspondence is attached hereto and incorporated herein as **"Exhibit A."**
4. "Exhibit A" was received by Plaintiff at her residence in Moody, Alabama.
5. The alleged and disputed debt of Plaintiff claimed in "Exhibit A" was incurred for personal, family, or household services, and was a "debt" as defined by the FDCPA at 15 U.S.C. §1692a(5).
6. In addition to Durham & Durham LLP's letterhead listing their Atlanta mailing address, The text at the top of Exhibit A states:

Durham & Durham Attorneys at Law
Dept. 8403
P.O. Box 1259
Oaks, PA 19456

RE: Outstanding Medical Invoice -
Trinity Emergency Physicians LLC

Our File Number: 2317231
Date of Service: 11/03/2007

Outstanding Balance: \$294.00

7. The text in the body of Exhibit A states:

FIRST NOTICE

Dear Wendy King:

Medical services have been provided to you by the physician group listed above. To date, full payment has not been received for these services. Ample time has been given for you to respond to your obligation.

Your account in the amount shown above has been forwarded to this office by the physician group for accountability. Please send payment to the above address as soon as possible so that we may clear this debt from our records and avoid further collection efforts.

Return this form with the above referenced amount within 30 days of receipt of this letter. Make check or money order payable to Durham & Durham and send to the address listed above. Upon receipt of the payment the account will be closed. If you are unable to pay the full amount at this time, please contact our office during our normal business hours of Monday through Friday from 8:00 AM until 5:30 PM Eastern Standard Time, to discuss alternate payment arrangements.

Thank you for your timely response.

8. Exhibit A contains the facsimile signature of Peter D. Durham, Esq. Exhibit A also contains the debt validation language required by 15 U.S.C. §1692g.
9. The least sophisticated consumer, receiving this letter from the Defendants, would be confused about their 30 day right to dispute the alleged debt since the letter, in addition to stating that a consumer had 30 days to dispute the validity of the debt, also required the consumer to "Return this form with the above referenced amount within 30 days of receipt of this letter."
10. The least sophisticated consumer, receiving this mass produced collection letter from the Defendants, bearing the facsimile of an attorney's signature would be deceived into thinking that this letter

actually came from an attorney or that an attorney had personally reviewed the consumer's file and had meaningful involvement in managing a potential case against the consumer. See *Clomon v. Jackson*, 988 F.2d 1314 (2d Cir.1993). ("There will be few, if any, cases in which a mass-produced collection letter bearing the facsimile of an attorney's signature will comply with the restrictions imposed by §1692e." *Clomon* at 364.)

11. This mass produced letter, upon information and belief was sent from Oaks, Pennsylvania. Upon information and belief, Peter D. Durham, Esq. is not licensed to practice law in Pennsylvania and Durham & Durham, LLP does not maintain an office in Oaks, Pennsylvania.
12. The least sophisticated consumer, receiving this letter, appearing to be from an attorney at a law office, with an attorney's facsimile signature and seeing a demand for payment to "avoid further collection efforts," would be confused as to whether or not legal action was imminent. However, upon information and belief, Peter D. Durham, Esq. is not licensed to practice law in the state of Alabama.

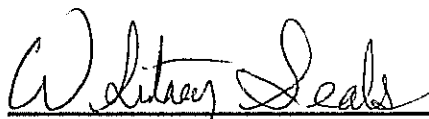
COUNT ONE
FAIR DEBT COLLECTION PRACTICES ACT

13. The Plaintiff adopts the averments and allegations of all the above paragraphs hereinbefore as if fully set forth herein.
14. The Defendants have engaged in collection activities and practices in violation of the Fair Debt Collection Practices Act (hereinafter referred to as "FDCPA") with respect to the Plaintiff's alleged consumer debt.
15. The Defendants used false representations and/or deceptive means to attempt to collect a debt in violation of §1692e(3) and §1692e(10).
16. The Defendant violated §1692f by using unfair and/or unconscionable means to attempt to collect a debt.
17. The Defendants violated the FDCPA because their collection letter contained language, specifically a demand for payment within 30 days, that contradicted and overshadowed the debt validation language required by §1692g.

AMOUNT OF DAMAGES DEMANDED

WHEREFORE, PREMISES CONSIDERED, Plaintiff demands a judgment against the Defendants as follows:

- A. Declaratory judgment that the Defendant's conduct violated the FDCPA;
- B. Statutory damages of \$1,000 from the Defendants for the violations of the FDCPA (15 U.S.C. §1692k);
- C. Actual damages for the Defendants' violations of the FDCPA;
- D. Costs and reasonable attorney's fees from the Defendant pursuant to 15 U.S.C. §1692k; and,
- E. Such other and further relief that this Court deems necessary, just and proper.



W. Whitney Seals (ASB 8890 W81S)
Attorney for Plaintiff
Pate & Cochrun, L.L.P.
P.O. Box 10448
Birmingham, AL 35202-0448
(205) 323-3900
(205) 323-3906 (facsimile)

PLAINTIFF REQUESTS THAT DEFENDANTS BE SERVED A COPY OF THIS COMPLAINT BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED TO THE FOLLOWING ADDRESS:

PETER D. DURHAM, ESQ.
C/O DURHAM & DURHAM, L.L.P.
5665 NEW NORTHSIDE DRIVE, SUITE 340
ATLANTA, GA 30328

DURHAM & DURHAM, L.L.P.
5665 NEW NORTHSIDE DRIVE, SUITE 340
ATLANTA, GA 30328





8199.363

RE:	Outstanding Medical Invoice - Trinity Emergency Physicians LLC
Our File Number:	2317231
Date of Service:	11/03/2007
Outstanding Balance:	\$294.00

Act # 60107653

FIRST NOTICE

Unless this account or any portion thereof is disputed within 30 days from receipt of this notice, we will assume this debt to be valid. If you dispute this debt or any portion thereof within this 30-day time period, we will furnish, at your written request, a verification of this debt, or the name and address of the original creditor. This is an attempt to collect a debt. Any information obtained will be used for that purpose.

IF PAYING BY VISA OR MASTERCARD, FILL OUT BELOW		
<input type="checkbox"/> VISA 	<input type="checkbox"/> MASTERCARD 	
CARD NUMBER	EXP. DATE	AMOUNT
SIGNATURE	PHONE (with area code)	

